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## **2016 Legislative Notes**

*From Kerry Hyatt Bennett, JD*

*ICADV Legal Counsel*

### **2016: Indiana Rewrites its Domestic Battery Statute**

In 2016, the Indiana General Assembly, essentially rewrote Indiana's Domestic Battery Statute, IC 35-42-2-1.3. The full text is below but some key comments are as follows:

- It removes any language of “spouse or living as if spouse” in order to stress that this statute applies only to offenses between family or household members.
- Family and Household member is broadly defined to include family, intimate partners, and now dating relationships whether the parties live together or not.
- It enhances the misdemeanor charge to a felony if the abuse results in moderate physical injury.
- It includes the abuse of mentally or physically disabled individuals, but does not define that term, which could be problematic.
- It includes the abuse of “endangered adults”, which typically refers to elder abuse.
- It criminalizes placing bodily waste on a family or household member in a rude insolent or angry manner as a form of domestic battery.
- The offense of domestic battery is a Class A misdemeanor unless the following circumstances apply:
- To be charged as a Level 6 felony offense:
  - The charged person has a previous unrelated conviction
  - The offense was committed by a person at least 18 in the presence of a child under 16 who could have seen or heard the incident.
  - The offense results in moderate bodily injury
  - The offense is committed by a person at least 18 and against a family or household member under 14.
  - The offense is committed against a person with a physical or mental disability by that person's caregiver.
  - The offense is committed against an “endangered adult” as defined by Indiana law. (IC 12-10-3-2)
- To be charged as a Level 5 felony offense:
  - The offense results in serious bodily injury.
  - The offense is committed with a deadly weapon.
  - The offense results in injury to a pregnant person if the offender knew of the pregnancy.
  - The offender has a previous conviction for battery against the same victim.
  - The offense results in bodily injury to a child under 14, a person with a mental or physical disability if committed by a caregiver, or an “endangered adult” as defined in IC 12-10-3-2.
- To be charged as a Level 4 felony offense:
  - The offense results in serious bodily injury to an “endangered adult”.
- To be charged as a Level 3 felony offense:
  - The offense is committed by a person over 18 against a person under 14.



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- **To be charged as a Level 2 felony offense:**
  - **The offense results in death of a family or household member:**
    - **under 14 or**
    - **an “endangered adult”.**

### **35-42-2-1.3. Domestic battery.**

- (a) Except as provided in subsections (b) through (f), a person who knowingly or intentionally:
  - (1) touches a family or household member in a rude, insolent, or angry manner; or
  - (2) in a rude, insolent, or angry manner places any bodily fluid or waste on a family or household member;
  - commits domestic battery, a **Class A misdemeanor**.
- (b) The offense under subsection (a)(1) or (a)(2) is a **Level 6 felony** if one (1) or more of the following apply:
  - (1) The person who committed the offense has a previous, unrelated conviction:
    - (A) for a battery offense included in this chapter; or
    - (B) in any other jurisdiction, including a military court, in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a battery offense included in this chapter.
  - (2) The person who committed the offense is at least eighteen (18) years of age and committed the offense against a family or household member in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense.
  - (3) The offense results in moderate bodily injury to a family or household member.
  - (4) The offense is committed against a family or household member who is less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age.
  - (5) The offense is committed against a family or household member of any age who has a mental or physical disability and is committed by a person having the care of the family or household member with the mental or physical disability, whether the care is assumed voluntarily or because of a legal obligation.
  - (6) The offense is committed against a family or household member who is an endangered adult (as defined in IC 12-10-3-2)
- (c) The offense described in subsection (a)(1) or (a)(2) is a **Level 5 felony** if one (1) or more of the following apply:
  - (1) The offense results in serious bodily injury to a family or household member.
  - (2) The offense is committed with a deadly weapon against a family or household member.
  - (3) The offense results in bodily injury to a pregnant family or household member if the person knew of the pregnancy.
  - (4) The person has a previous conviction for a battery offense:
    - (A) included in this chapter against the same family or household member; or
    - (B) against the same family or household member in any other jurisdiction, including a military court, in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a battery offense included in this chapter.



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- (5) The offense results in bodily injury to one (1) or more of the following:
  - (A) A family or household member who is less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age.
  - (B) A family or household member who has a mental or physical disability if the offense is committed by an individual having care of the family or household member with the disability, regardless of whether the care is assumed voluntarily or because of a legal obligation.
  - (C) A family or household member who is an endangered adult (as defined in IC 12-10-3-2).
- (d) The offense described in subsection (a)(1) or (a)(2) is a Level 4 felony if it results in serious bodily injury to a family or household member who is an endangered adult (as defined in IC 12-10-3-2).
- (e) The offense described in subsection (a)(1) or (a)(2) is a Level 3 felony if it results in serious bodily injury to a family or household member who is less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age.
- (f) The offense described in subsection (a)(1) or (a)(2) is a Level 2 felony if it results in the death of one (1) or more of the following:
  - (1) A family or household member who is less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age.
  - (2) A family or household member who is an endangered adult (as defined in IC 12-10-3-2).

### **31-9-2-44.5. Family or household member.**

- (a) An individual is a "family or household member" of another person if the individual:
  - (1) is a current or former spouse of the other person;
  - (2) is dating or has dated the other person;
  - (3) is engaged or was engaged in a sexual relationship with the other person;
  - (4) is related by blood or adoption to the other person;
  - (5) is or was related by marriage to the other person;
  - (6) has or previously had an established legal relationship:
    - (A) as a guardian of the other person;
    - (B) as a ward of the other person;
    - (C) as a custodian of the other person;
    - (D) as a foster parent of the other person; or
    - (E) in a capacity with respect to the other person similar to those listed in clauses (A) through (D); or
  - (7) has a child in common with the other person.
- (b) An individual is a "family or household member" of both persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7) applies if the individual is a minor child of one (1) of the persons.



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### **35-31.5-2-292. Serious bodily injury.**

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"Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes:

- (1) serious permanent disfigurement;
- (2) unconsciousness;
- (3) extreme pain;
- (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or
- (5) loss of a fetus.

### **35-31.5-2-29. Bodily injury.**

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"Bodily injury" means any impairment of physical condition, including physical pain.